

of separate aid, benefits, or services or different treatment for handicapped and nonhandicapped persons shall request and receive written approval from TVA before instituting such policy or undertaking any such separate treatment.

(e) Recipients shall take appropriate steps to ensure that communications to their applicants, employees, and beneficiaries are available to such persons with impaired vision and hearing.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Aug. 26, 2003]

§ 1307.5 Employment discrimination.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity subject to this part.

(b) *Specific discriminatory actions.* With respect to a program or activity subject to this part, a recipient shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient shall make all decisions concerning employment under any program or activity subject to this part in a manner which ensures that discrimination on the basis of handicap does not occur, including the following activities:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection

for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this part, including relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(e) *Reasonable accommodation.* (1) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program or activity subject to this part. Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, or other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity under this paragraph factors to be considered include but are not limited to:

(i) The nature and cost of the accommodation needed, and its effect, if any, on the recipient's programs or activities.

(ii) The kind of operation conducted by the recipient, including the composition and structure of the recipient's workforce; and

(iii) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget.

(3) It is not an undue hardship with respect to a qualified handicapped employee or applicant if the sole basis for

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the claim of hardship is the need to make an accommodation to the physical or mental limitations of the otherwise qualified employee or applicant and the accommodation is deemed by TVA to be reasonable.

(f) *Employment criteria.* A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) *Preemployment inquiries.* (1) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as set out in this paragraph (g).

(2) A recipient may make a preemployment inquiry into an applicant's ability to perform job-related functions.

(3) When a recipient is taking remedial action to correct the effects of past discrimination, taking voluntary action to overcome the effects of conditions that resulted in limited participation in its TVA-assisted program or activity or is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided, That* the recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is so used, that:

(i) The information requested is intended for use solely in connection with such remedial, voluntary or affirmative action efforts;

(ii) The information is being requested on a voluntary basis and it will be kept confidential as provided in paragraph (g)(4) of this section;

(iii) Refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(iv) The information will be used only in accordance with this part.

(4) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a

medical examination conducted prior to the employee's entrance on duty: *Provided, That:*

(i) All entering employees are subjected to such an examination regardless of handicap; and

(ii) The results of such an examination are used only in accordance with the requirements of this part.

(5) Information obtained in accordance with this section as to the medical condition or history of an employee or applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iii) TVA officials investigating compliance with section 504 shall be provided information which they deem relevant upon request.

[45 FR 22895, Apr. 4, 1980, as amended at 68 FR 51356, Aug. 26, 2003]

§ 1307.6 Accessibility.

(a) *General.* No qualified handicapped person shall, because facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity subject to this part.

(b) *Existing facilities.* (1) Each program or activity subject to this part shall be operated so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. A recipient is not required to make building alterations or structural changes if other methods are effective in achieving accessibility. Such compliance methods may include (subject to the provisions of §§ 1307.4 and 1307.5), reassigning aid, benefits, or services to accessible locations within a facility;